

FCC MAIL SECTION

Federal Communications Commission

DA 98-716

APR 22 10 01 AM '98

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-55
Table of Allotments,)	RM-9255
FM Broadcast Stations.)	
(Pleasanton, Bandera and)	
Hondo, Texas))	

NOTICE OF PROPOSED RULE MAKING

Adopted: April 8, 1998

Released: April 17, 1998

Comment Date: June 8, 1998

Reply Comment Date: June 23, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Reding Broadcasting Company ("petitioner"), licensee of Station KBUC(FM), Channel 252A, Pleasanton, Texas, requesting the substitution of Channel 253C2 for Channel 252A at Pleasanton and the modification of Station KBUC(FM)'s license to specify operation on the higher powered channel. In order to accommodate the upgrade at Pleasanton, petitioner also requests the substitution of Channel 276A for Channel 252A for Station KEEP(FM) at Bandera, Texas; and the change of site and substitution of Channel 290A for Channel 253A for Station KRBH(FM) at Hondo, Texas. Petitioner states it will apply for Channel 253C2 and also will reimburse the licensee of Station KEEP(FM) for changing channels and the permittee of Station KRBH(FM) for changing its site and channel.¹

2. We believe petitioner's proposal warrants consideration since it would enable Station KBUC(FM) to expand its coverage area. Channel 253C2, Channel 276A and Channel 290A can be allotted to Pleasanton, Bandera and Hondo, respectively, in compliance with the

¹ Petitioner has submitted a copy of an "Agreement" denoting the consent of Stations KEEP(FM) and KRBH(FM) to change their respective channels. In addition, the Agreement includes a statement from the licensee of Station KRBH indicating its willingness to change its transmitter site at Hondo in order to accommodate Station KBUC-FM's upgrade.

Commission's minimum distance separation requirements. The allotment of Channel 253C2 to Pleasanton will require a site restriction of 28.7 kilometers (17.8 miles) northwest.² Channel 276A can be allotted to Bandera and can be used at the site specified in Station KEEP(FM)'s license.³ The allotment of Channel 290A at Hondo will require a site restriction of 10.4 kilometers (6.4 miles) west.⁴ Since Pleasanton, Bandera and Hondo are located within 320 kilometers (199 miles) of the U.S.- Mexican border, concurrence of the Mexican government was solicited and has been obtained for these allotments.

3. As requested, we shall propose to modify the license of Station KBUC(FM) at Pleasanton, Texas, to specify operation on Channel 253C2. In accordance with Section 1.420(g) of the Commission's Rules we will not accept competing expressions of interest or require that the petitioner demonstrate the availability of an additional equivalent channel at Pleasanton, Texas.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Pleasanton, Texas	252A	253C2
Bandera, Texas	252A	276A
Hondo, Texas	253A	253A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before June 8, 1998, and reply comments on or before June 23, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington,

² The coordinates for Channel 253C2 at Pleasanton are 29-11-00 and 98-38-00.

³ The coordinates for Channel 276A at Bandera are 29-51-22 and 99-05-25.

⁴ The coordinates for Channel 290A at Hondo are 29-21-00 and 99-15-00.

DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Mark N. Lipp
Ginsburg, Feldman & Bress, Chartered
1250 Connecticut Avenue, NW
Washington, D.C. 20036

and

Gene A Bechtel
Bechtel & Cole, Chartered
1901 L Street, NW
Suite 250
Washington, D.C. 20036
(Counsel for petitioner)

7. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Notice of Proposed Rule Making to the following:

James G. Withers
1921 Crampton Court
Chesterfield, Missouri 63017
[Licensee of Station KEEP(FM)]

Five Points Broadcasting, Inc.
9450 Plainfield Drive
Rock Hill, Missouri 63119
[permittee of Station KRPB(FM)]

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been

decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, DC.